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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-583-856]

#### **Corrosion-Resistant Steel Products from Taiwan: Notice of Court Decision Not in Harmony with Final Determination of Antidumping Duty Investigation and Notice of Amended Final Determination of Investigation**

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** On December 20, 2018, the United States Court of International Trade (Court) issued a final judgment in *Prosperity Tieh Enterprise Co., Ltd. et. al. v. United States*, Consol. Court No. 16-00138; Slip Op. 18-175 (CIT Dec. 20, 2018), sustaining the Department of Commerce's (Commerce) remand results for the final determination of the antidumping investigation of certain corrosion-resistant steel products (CORE) from Taiwan, covering the period of investigation (POI) April 1, 2014, through March 31, 2015. Commerce is notifying the public that the Court has made a final judgment that is not in harmony with Commerce's amended final determination of the antidumping investigation, and that Commerce is amending the final determination.

**DATES:** Applicable December 30, 2018.

**FOR FURTHER INFORMATION CONTACT:** Shanah Lee, AD/CVD Operations Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC, 20230; telephone: (202) 482-6386.

## SUPPLEMENTARY INFORMATION:

### Background

On June 2, 2016, Commerce published its *Final Determination*, and on July 25, 2016, Commerce published its *Amended Final Determination and Order* concerning the antidumping investigation of CORE from Taiwan.<sup>1</sup> The plaintiffs in this litigation, consisting of the two-mandatory respondents, Prosperity Tieh Enterprise Co., Ltd. (Prosperity) and Yieh Phui Enterprise Co., Ltd. (Yieh Phui) timely filed complaints with the Court challenging certain aspects of Commerce's investigation. The petitioners in the investigation, AK Steel Corporation, Nucor Corporation, Steel Dynamics, Inc., California Steel Industries, Inc., ArcelorMittal USA LLC, and United States Steel Corporation intervened as defendant-intervenors.

On January 23, 2018, the Court remanded three aspects of Commerce's findings, in *Prosperity Tieh I*.<sup>2</sup> First, the Court held that Commerce's determination to deny Yieh Phui's and Synn Industrial Co., Ltd.'s post-sale rebate adjustments "violated its own regulations," and remanded to Commerce to "correct this error."<sup>3</sup> Second, the Court remanded Commerce's determination to collapse Prosperity, Yieh Phui, and Synn pursuant to its analysis under 19 CFR 351.401(f), because "the collapsing decision was based on erroneous findings of fact."<sup>4</sup> Third, the Court remanded Commerce's application of partial adverse facts available to Prosperity based on Commerce's finding that Prosperity misclassified certain of its products in reporting

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<sup>1</sup> *Certain Corrosion-Resistant Steel Products from Taiwan: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 81 FR 35313 (June 2, 2016), and accompanying Issues and Decision Memorandum (IDM) (*Final Determination*), as amended by *Certain Corrosion-Resistant Steel Products from India, Italy, the People's Republic of China, the Republic of Korea and Taiwan: Amended Final Affirmative Antidumping Determination for India and Taiwan, and Antidumping Duty Orders*, 81 FR 48390 (July 25, 2016) (*Amended Final Determination and Order*).

<sup>2</sup> See *Prosperity Tieh Enterprise Co., Ltd. et. al. v. United States*, Consol. Court No. 16-00138; Slip Op. 18-5, at 2, 31-32 (CIT January 23, 2018) (*Prosperity Tieh I*).

<sup>3</sup> *Id.* at 6-15.

<sup>4</sup> *Id.* at 15-20.

sales in the databases by placing these products in the wrong yield strength category.<sup>5</sup> The Court held that, in reporting its yield strength, “Prosperity complied with the instructions as Commerce wrote them.”<sup>6</sup> The Court ruled that “Commerce may not use facts otherwise available as a substitute for information that is now on the administrative record of the investigation, but indicated that “the type of corrective action is a matter for Commerce to decide” as to this remanded issue.<sup>7</sup>

In its Final Results Redetermination, Commerce: 1) granted, under protest, downward price adjustments to the home market sales price equal to the amount of Yieh Phui’s post-sale rebates granted to the company’s home market customers; 2) continued to treat Prosperity, Yieh Phui, and Synn as a single-entity consistent with 19 CFR 351.401(f); and 3) revised, under protest, the Yieh Phui/Prosperity/Synn entity’s weighted-average dumping margin by using Prosperity’s reported yield strength data.<sup>8</sup> After accounting for all such changes and issues in the Final Results Redetermination, the resulting antidumping margin for the Yieh Phui/Prosperity/Synn entity is 3.66 percent.<sup>9</sup> On December 20, 2018, the Court sustained the Final Results Redetermination, in *Prosperity II*.<sup>10</sup>

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<sup>5</sup> *Id.* at 20-31.

<sup>6</sup> *Id.* at 28.

<sup>7</sup> *Id.* at 30-31.

<sup>8</sup> See Final Results of Redetermination Pursuant to *Prosperity Tieh Enterprise Co., Ltd. et. al. v. United States*, Consol. Court No. 16-00138; Slip. Op. 18-5, dated May 23, 2018 (Final Results Redetermination).

<sup>9</sup> *Id.* at 31.

<sup>10</sup> See *Prosperity Tieh Enterprise Co., Ltd. et. al. v. United States*, Consol. Court No. 16-00138, Slip. Op. 18-175 (CIT December 20, 2018) (*Prosperity II*) (this opinion was made public on February 11, 2019).

## Timken Notice

In its decision in *Timken*,<sup>11</sup> as clarified by *Diamond Sawblades*,<sup>12</sup> the Court of Appeals for the Federal Circuit (Federal Circuit) held that, pursuant to section 516A of the Tariff Act of 1930, as amended (Act), Commerce must publish a notice of a court decision that is not “in harmony” with a Commerce determination and must suspend liquidation of entries pending a “conclusive” court decision.<sup>13</sup> The Court’s December 20, 2018, judgment constitutes a final decision of the Court that is not in harmony with Commerce’s *Final Determination* and *Amended Final Determination and Order*. As such, Commerce has published this notice in fulfillment of the publication requirement of *Timken*.

## Amended Final Determination and Amended Order

Because there is now a final court decision, Commerce is amending the *Final Determination* and *Amended Final Determination and Order* with respect to the weighted-average dumping margin for the Yieh Phui/Prosperity/Synn entity. Furthermore, in the *Amended Final Determination and Order*, and in accordance with section 735(c)(5)(A) of the Act, for companies not individually investigated, we applied an “all-others” rate of 10.34 percent.<sup>14</sup> This rate was determined based on assigning the Yieh Phui/Prosperity/Synn entity’s rate as the all-others rate.<sup>15</sup> As noted above, the Yieh Phui/Prosperity/Synn’s amended weighted-average dumping margin is now 3.66 percent. Therefore, for purposes of this amended *Final Determination*, Commerce will instruct CBP that the all-others rate is to be amended to 3.66

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<sup>11</sup> See *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

<sup>12</sup> See *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

<sup>13</sup> See sections 516A(c) and (e) of the Act.

<sup>14</sup> See *Amended Final Determination and Order*, 81 FR at 48391; *Final Determination*, 81 FR at 35314.

<sup>15</sup> See *Final Determination*, 81 FR at 35314.

percent.<sup>16</sup> Accordingly, the revised weighted-average dumping margin for the collapsed Yieh Phui/Prosperity/Synn entity and for all-others is as follows:

<b>Producer</b>	<b>Weighted-Average Dumping Margin (percent)</b>
Prosperity Tieh Enterprise Co., Ltd., Yieh Phui Enterprise Co., Ltd., and Synn Industrial Co., Ltd.	3.66
All-Others	3.66

#### Cash Deposit Requirements

Since the *Final Determination*, Commerce has established a new cash deposit rate for Prosperity and Yieh Phui/Synn.<sup>17</sup> Therefore, this amended final determination does not change the later-established cash deposit rates for those producers and/or exporters. For all-other producers and/or exporters, except for companies that subsequently received their own rates in the first administrative review,<sup>18</sup> Commerce will issue revised cash deposit instructions to U.S. Customs and Border Protection, adjusting the cash deposit rate for all-other producers and/or exporters to 3.66 percent, effective December 30, 2018.

Lastly, we note that, at this time, Commerce remains enjoined by Court order from liquidating entries that were produced and/or exported by Prosperity and imported by Prosperity Tieh USA, that were the subject of the *First Administrative Review Final Results*, and that were entered, or withdrawn from warehouse, on or after June 2, 2016, up to and including June 30, 2017. These entries will remain enjoined pursuant to the terms of the injunction during the pendency of any appeals process.

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<sup>16</sup> See *United States Steel Corp. v. United States*, Slip Op. 18-139, at 8 (CIT October 17, 2018).

<sup>17</sup> See *Certain Corrosion-Resistant Steel Products from Taiwan: Final Results of Antidumping Administrative Review; 2016-2017*, 83 FR 64527 (December 17, 2018) (*First Administrative Review Final Results*). As a result of this administrative review, Commerce continued to treat Yieh Phui and Synn as a single entity and determined that Prosperity should no longer be collapsed with Yieh Phui and Synn.

<sup>18</sup> *Id.*, at 64528.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(e), 751(a)(1), and 777(i)(1) of the Act.

Dated: February 19, 2019.

**Gary Taverman,**  
*Deputy Assistant Secretary*  
*for Antidumping and Countervailing Duty Operations,*  
*performing the non-exclusive functions and duties of the*  
*Assistant Secretary for Enforcement and Compliance.*

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